

05/21/08

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FRANKS,

Defendant.

Case No. 3:07CR90(WHR)

PLEA AGREEMENT

This constitutes the plea agreement between the defendant, **CHARLES FRANKS** ("Defendant"), individually and through his attorney, Cheryll A. Bennett, Esq., and the United States Attorney's Office for the Southern District of Ohio ("USAO"), through the undersigned Assistant United States Attorney, (collectively, "the parties"). The parties hereby agree as follows:

PLEA

1. Defendant agrees to plead guilty to Count 2 of an Indictment filed herein on May 23, 2007, charging him with violating 18 U.S.C. § 2252 (a)(4)(B) (Possession of Child Pornography). Defendant understands the nature of the charge to which he is pleading guilty, and admits that he is, in fact, guilty of the offense charged in Count 2 of the Indictment, and that the Statement of Facts, which is attached hereto as Exhibit A and incorporated herein by this reference, is true and correct.

2. Defendant understands that he has the following rights:

- to plead not guilty, or having already so pleaded, to persist in that plea;
- to a jury trial;
- to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;
- at trial, to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

Defendant further understands that if the court accepts his plea pursuant to this plea agreement, there will be no trial and he waives these trial rights.

STATUTORY PENALTIES, RESTITUTION AND SENTENCING

3. Because Defendant has a prior conviction under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual contact involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, the statutory maximum sentence that the Court can impose for a violation of 18 U.S.C. § 2252 (a)(4)(B) is: at least 10 years and up to 20 years imprisonment; at least 5 years and up to a lifetime period of supervised release; a fine of up to \$250,000; and a mandatory special assessment of \$100.

4. Defendant understands, agrees, and acknowledges that under the Sex Offender Registration and Notification Act, a federal law, he must register and keep the registration current in each of the following jurisdictions: where he resides; where he is an employee; and where he is a student. Defendant understand that the requirements for registration include providing his

name, his residence address, and the names and addresses of any places where he is or will be an employee or a student, among other information. Defendant further understands that the requirement to keep the registration current includes informing at least one jurisdiction in which he resides, is an employee, or is a student not later than three business days after any change of his name, residence, employment or student status. Defendant has been advised and understands that failure to comply with these obligations subjects him to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

5. The Probation Department will conduct a pre-sentence investigation and will recommend to the Court an advisory sentencing guideline range. The parties reserve the right to argue and offer supporting evidence as to the Sentencing Guidelines factors, including but not limited to a base offense level, specific offense characteristics, adjustments and departures, as well as offer evidence and argument relating to sentencing, including but not limited to the factors set forth in 18 U.S.C. § 3553(a). Defendant understands that the Probation Department's recommendations are not binding on the Court and the terms of this Plea Agreement are not binding upon the Court or Probation Department. Defendant understands that, after investigation and review, the Court alone will determine an appropriate sentence, which may be inconsistent with any recommendations of the parties, and the Court may make an upward departure or variance outside of the offense level range established by the applicable sentencing guideline. In the event that the Court does not accept the recommendations of the parties, Defendant fully understands that he shall not have the right to withdraw his guilty plea.

DEFENDANT'S ADDITIONAL OBLIGATIONS

6. Defendant agrees that:

(a) He is not a prevailing party as defined by 18 U.S.C. § 3006A and hereby expressly waives his right to sue the United States;

(b) At or prior to the time he enters his plea of guilty pursuant to this plea agreement, he will surrender to the Immigration Customs and Enforcement Administration all visual depictions, in any format, he has of minors engaged in sexually explicit conduct. This includes, but is not limited to, any and all computers, media, storage material, videos, video tapes, DVDs, CDs, photos, JPEG files, MPEG files, GIF files, AVI files, printouts, and any other matters or material constituting or containing images of minors engaged in sexually explicit conduct. Defendant forever abandons any interest or claim in any and all such matters and material;

(c) He will pay the applicable \$100 special assessment at or before the time of sentencing;

(d) He will not move to withdraw his guilty plea entered pursuant to this Plea Agreement or otherwise seek to have it set aside.

FORFEITURE

7. Defendant hereby agrees to the entry of an Order of Forfeiture to the United States, pursuant to 18 U.S.C. §2253, of visual depictions described in 18 U.S.C. §2253(a)(1), and all matter containing any such visual depiction which was produced, transported, mailed, shipped or received in violation of Chapter 110; all property constituting or traceable to gross profits or other proceeds obtained from such offense; and any/or all property, real or personal used or

intended to be used to commit or promote the commission of such offense, including, but not limited to:

- a. One Compaq Presario computer bearing model number SR101NX, Serial Number MXK410095X.

Defendant acknowledges that the above property belongs solely to him. Defendant waives any and all challenges to the forfeiture of the above property, including but not limited to: waiving any deadlines the United States may have been required to meet in filing any forfeiture action; waiving the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing and incorporation of the forfeiture in the judgment; and waiving all constitutional and statutory challenges. Defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11 (b)(1)(J), at the time his guilty plea is accepted.

THE USAO'S OBLIGATIONS

8. If Defendant complies fully with all of his obligations under this Plea Agreement, the USAO agrees (1) not to further prosecute Defendant for criminal offenses, including, but not limited to violations of 18 U.S.C. §§ 2252(a), based on Defendant's conduct described in the Statement of Facts attached hereto as Exhibit A; and (2) to dismiss Count 1 of the Indictment. Defendant understands that the USAO is free to prosecute Defendant for any unrelated unlawful past conduct or any unlawful conduct that occurs after the date of the filing of this Plea Agreement. Defendant understands and acknowledges that at the time of sentencing the Court may consider any dismissed counts and uncharged conduct in determining Defendant's sentence.

NO OTHER AGREEMENTS

11. Except as set forth herein, there are no promises, understandings or agreements between the USAO and Defendant or Defendant's counsel. This agreement binds only the USAO and does not bind any other federal, state or local prosecuting authority.


DEFENDANT'S ACKNOWLEDGMENT

12. By signing this agreement, Defendant acknowledges that he has read this agreement, that he has carefully discussed the terms of this agreement with his attorney(s), and that he understands and accepts those terms voluntarily, without duress or coercion, and of his own free will, because he is, in fact, guilty of the offense charged in Count 2 of the Indictment. Defendant further acknowledges and confirms that no one has threatened, coerced or forced him in any way to enter into this Plea Agreement, that he has conferred with his lawyer regarding the facts of this case and the applicable law, including any possible defenses, and that he is fully satisfied with the representation and services of his attorney(s) in this matter.


GREGORY G. LOCKHART
United States Attorney


LAURA I. CLEMMENS
Assistant United States Attorney

6-5-08
Date


CHARLES FRANKS
Defendant

6-5-08
Date


CHERYL A. BENNETT, ESQ.
Attorney for CHARLES FRANKS

6/5/08
Date

5/9/08

Exhibit A
Statement of Facts

On or about September 13, 2006, the defendant, **CHARLES FRANKS**, ("Defendant"), knowingly possessed at his residence located at 1178 S. Miami Street, West Milton, Ohio ("residence"), visual depictions of minors engaged in sexually explicit conduct that had been shipped and transported in interstate and foreign commerce. Defendant obtained these images using a computer, namely, a Compaq Presario, Model # SR101NX, Serial Number MXK410095X, by downloading the images from the internet. These visual depictions included images of minors engaged in sexually explicit conduct, including both still images and videos, and were of children under the age of 18 engaged in sexually explicit conduct with adults and other children under the age of 18. These visual depictions included greater than 600 images including videos. These visual depictions include images of prepubescent children and images of sadistic and masochistic conduct or other depictions of violence. These visual depictions were of minors engaged in sexually explicit conduct, and the production of these still images and videos involved the use of minors engaged in sexually explicit conduct.

On December 18, 1998, Defendant was convicted in the Wood County, Ohio, Court of Common Pleas, Case Number 98-CR-211, of Gross Sexual Imposition, in that he did have sexual contact with HN, not his spouse, the said HN being less than 13 years of age, in violation of 29 ORC § 2907.05(A)(4), a conviction under the laws of the State of Ohio relating to aggravated sexual abuse, sexual abuse, or abusive sexual contact involving a minor or ward.

CHARLES FRANKS , HEREBY ACKNOWLEDGES THE STATEMENT OF FACTS TO BE TRUE AS HE VERILY BELIEVES ON THIS 5 DAY OF JUNE, 2008.


CHARLES FRANKS